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17 June 1970.

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

16 JUN 1970

Mr. Wilfred H. Rommel
Assistant Director for Legislative Reference
Bureau of the Budget
Washington, D. C. 20503

Dear Mr. Rommel:

Chairman Henderson, of the Subcommittee on Manpower and Civil Service, House Post Office and Civil Service Committee, has requested a report from this Agency on a bill, S. 782, to protect the constitutional rights and privacy of Government employees.

Enclosed is a proposed report to the Subcommittee on S. 782 and, for the information of the Bureau, a statement tracing the major developments involving this legislation over the last two Congresses. A classified addendum to the proposed report is being sent under separate cover.

Advice is requested as to whether the Bureau of the Budget has objections to the submission of this report.

Sincerely,



John M. Maury
Legislative Counsel

Enclosure

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D. C. 20505

OFFICE OF THE DIRECTOR

The Honorable David N. Henderson, Chairman
Subcommittee on Manpower and Civil Service
Committee on Post Office and Civil Service
House of Representatives
Washington, D. C. 20515

My dear Mr. Chairman:

This is in response to your request for my views on S. 782, a bill to protect the civilian employees of the Executive Branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasion of their privacy.

I do not attempt to comment on the impact of S. 782 in general. My main concern is rather with its effect on the Central Intelligence Agency and the other agencies forming the intelligence community.

Certain provisions of S. 782 directly conflict with the statutory responsibilities of the Director of Central Intelligence for protecting intelligence sources and methods, and data relating to the organization of the Central Intelligence Agency. For example, the National Security Act of 1947 provides:

" . . . the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure; . . ."
(50 U.S.C. 403(d)),

and the Central Intelligence Agency Act of 1949, as amended, provides:

"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102(d)(3) of the National

Security Act of 1947 (Public Law 253, Eightieth Congress, first session) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions. . . of any. . . law which require[s] the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. . ." (50 U.S.C. 403g).

The adverse impact of S. 782 on the fundamental security interests of this Agency was developed in detail during my testimony before an executive session of your Subcommittee on 25 June 1968 in connection with S. 1035, an earlier version of S. 782. I am forwarding under separate cover certain classified material which restates our principal concerns.

S. 782 is an improvement over S. 1035 in several respects, but the adversary procedures which it authorizes pose the same critical problems inherent in S. 1035--the Agency must either remain silent in the face of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect, and disclosure of which might damage the national intelligence effort.

It is therefore my considered judgment that the Central Intelligence Agency requires a complete exemption from S. 782 such as section 9 of the bill provides for the Federal Bureau of Investigation. It is also my belief that S. 782 creates serious problems for certain other components of the intelligence community, such as the National Security Agency, and I trust that their views will receive favorable consideration.

I shall be happy to provide any additional information you may request.

The Bureau of the Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,



Richard Helms
Director

Enclosure
(Under Separate Cover)

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CIA - Personnel Security and Suitability

1. The Agency has special responsibility to ensure the loyalty, security consciousness, integrity and psychological stability of its employees:

a. Soviet and other hostile services assign overriding priority to penetrating U.S. intelligence organs by identifying and exploiting personal vulnerabilities and weaknesses of our personnel.

b. Such penetration can enable the enemy to identify and neutralize our own intelligence operations; learn what we know, and don't know, about enemy capabilities and intentions; gain insights enabling the enemy to confuse and deceive us; and provide vital information about U.S. national policy, military capabilities, technology, etc., with which Agency personnel often become familiar in the course of their routine work.

c. Intelligence personnel are not only an attractive target for the enemy, but in many respects a particularly accessible one. Unlike members of most Government organizations, intelligence personnel often must carry out their demanding and sometimes dangerous assignments completely alone and in hostile areas. They are thus subject to severe psychological pressures. They are far removed from immediate supervision, or even observation by friendly colleagues. In these circumstances any latent vulnerabilities and instabilities in their character or loyalty may come to the surface and be detected and exploited by an ever-alert enemy.

d. The only protection against these hazards is a careful and thorough assessment of the individual to ensure the selection of the right man for the job.

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e. This is essential not only in the interest of the Agency and the Government, but in that of the individual as well. Many people, through no fault of their own, are subject to latent weaknesses and vulnerabilities of one sort or another, and we believe it would be a great disservice to them to impose upon them burdens for which they are unfitted, perhaps leading to unfortunate consequences for them as well as for the Agency.

2. Hence we have over the years, with the best professional advice available, devised a system of medical and psychological tests and security checks designed to identify potential problems in these fields before they can cause serious damage. In a sense these tests may be compared with the thorough assessments employed in the selection of jet pilots and astronauts--too much is at stake to take chances with avoidable human error or weakness.

3. In the past there have been all too many cases where sensitive agencies of both the U.S. and other free world governments have suffered massive damage precisely because latent human weaknesses of individuals in key positions were detected and exploited by our enemies: several cases a few years back seriously disrupted the effectiveness of NSA; the British Intelligence Service has still not recovered from the effects of the Philby, Blake and other cases; the Germans, French and Swedes, among others, have had similar experiences; and just last year an intensive investigation was taking place in Brussels to determine the damage to NATO security resulting from an espionage case there.

4. In sum, CIA's procedures for ensuring the security and suitability of its personnel have been developed over the years on the basis of the Agency's specialized knowledge of the aims and methods of the opposition, the importance and sensitivity of the Agency's responsibilities, the best available professional advice, and the cumulative practical experience of over two decades of Agency management. These procedures have, with only the rarest exceptions, had the full understanding and support of Agency personnel. Any major changes in these procedures should be adopted only after a most careful examination of the possible consequences.

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Section-By-Section Analysis of Certain Provisions of S. 782

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the Executive Branch, or by any outside parties or organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter or subject other than the performance of official duties.

The purpose of this section is to protect employees from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties.

The language is so broad that it can be interpreted to prohibit a department or agency from taking notice of the attendance of an employee at meetings of subversive organizations or meetings designed to undermine the Government of the United States. Many departments and agencies, and particularly those dealing with security matters, would find such a prohibition intolerable.

Section 1 (d). Makes it unlawful to require an employee to make any report of his activities or undertakings not related to the performance of official duties unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

The purpose of this section is to guarantee the freedom of an employee to participate in any endeavor or activity in his private life as a citizen, free of compulsion to report to supervisors his action or inaction, his involvement or his noninvolvement. It is to assure that he is free of intimidation or inhibition as a result of the employment.

This section is of primary importance to those agencies concerned with security matters which could be seriously compromised by employee activities and relationships not directly connected with his employment. Security agencies must request their employees to report contacts with foreign officials not only to give the employer notice of the relationship but also to protect the employee in his personal security should the foreign official be a member of an intelligence service. Similarly, the security agencies must request employees to submit publications and speeches for clearance in advance to insure that there is no inadvertent disclosure of intelligence information.

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Section 1 (e). Makes it unlawful to require or request any applicant or employee to submit to any interrogation or examination designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters. The section also prohibits the use of psychological testing to inquire into these same areas. These questions may be asked only on the determination by a physician that they are necessary to enable him to determine whether or not an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge.

A partial exemption from this subsection is provided for CIA and the NSA in section 6. These agencies may use psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each individual case that the information is necessary to protect the national security.

Psychological testing in these areas is part of the total screening process which has been established to weed out applicants with undesirable traits. It is of primary concern to security agencies. The exemption provided by section 6 affords some relief, but it will still be necessary to make personal findings in each individual case. This implies that psychological screening is an exception rather than the necessary procedure in every case.

Section 1 (f). Prohibits the use of a polygraph test designed to elicit from an applicant or employee information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters.

The purpose is not to prohibit the use of the polygraph but to prohibit its use to elicit information considered to be of a personal nature.

A partial exemption from this subsection is provided for CIA and NSA in section 6. The polygraph may be used in the proscribed areas on the basis of a personal finding by the Directors or their designees in each individual case that the test is necessary to protect the national security. As with the psychological testing, polygraph testing is of primary concern to the security agencies who have found it to be not only an invaluable supplement to field investigations but uniquely effective in detecting certain types of security vulnerabilities. It is particularly useful in uncovering undesirable characteristics which do

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not appear in field investigations. The requirement for individual findings in each case to obtain relief from this subsection implies that polygraph screening is an exception rather than a necessary procedure.

Section 1 (i). Makes it illegal to request any employee to disclose any items of his property, income, or other assets, sources of income, or liabilities. The first proviso excepts those employees who have authority to make final determination with respect to claims which require expenditure of monies of the United States. The second proviso excepts reports as may be necessary or appropriate for the determination of liabilities for taxes, tariffs, custom duties, or other obligations imposed by law.

A partial exemption for the NSA and the CIA has been granted in section 6. Financial disclosure may be requested of an employee or applicant on the basis of a personal finding by the Directors or their designees in each individual case that the information is necessary to protect the national security. The broad language used could prohibit requesting certain information from employees for such things as credit union loans, health insurance reimbursements, and other programs designed for the welfare of the employee, which are not directly related to national security and thus not covered by the partial exemption granted CIA and NSA.

Section 1 (j). Makes it illegal to request financial disclosure from those employees excepted under the first proviso of subsection (i) other than specific items tending to indicate a conflict of interest.

Full financial disclosure assists both the employee and the Government in making what at best is a difficult decision as to conflict of interest. In the absence of full disclosure, it appears that this burden is placed entirely upon the employee.

Section 1 (k). Makes it illegal to require an employee who is under investigation for misconduct to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice if he so requests. In the case of NSA and CIA, counsel must be either another employee of, or approved by, the agency involved.

This right inures to the employee at the inception of the investigation and does not require that the employee be accused formally of any wrongdoing before he may request presence of counsel or friend.

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This section is understood to be of concern to all departments and agencies and could lead to a serious deterioration of employee discipline. If a supervisor asks an employee for an explanation of consistent tardiness the employee is entitled to counsel at this stage. The section is of even more concern to the security agencies which may find it necessary to interrogate an employee regarding activities related to security matters.

Section 1 (1). Makes it illegal to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise discriminate against an employee by reason of his refusal or failure to submit or comply with any requirement made unlawful by this act.

The purpose of this section is to prohibit discrimination against any employee because he refuses to comply with an illegal order as defined by this act or takes advantage of a legal right embodied in the act.

This section, combined with section 4, could seriously undermine the authority of any executive agency to conduct its business. For example, any employee being transferred to a post to which he objects could block the transfer with a suit alleging a violation of this act until such time as the case is brought to trial and it is proven that the transfer is for the benefit of the Government and is not a disciplinary action.

Section 4. Permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring a civil action in the district courts.

The potential of this section when combined with section 1 (1) is most serious. With the written consent of any person affected or aggrieved by a violation or threatened violation, any employee organization may bring action on behalf of such person, or may intervene in such action. This would appear to establish a basis for jurisdictional conflicts between competing unions. Further, this section and section 5 establish two new forums for an employee who is terminated for cause to contest the termination on the issue of a violation of this act.

Since the court action authorized by the bill is against the offending supervisor rather than the department or agency, the practical result is litigation between one employee and another. This in turn could expose supervisors to continued harassment by disgruntled employees with the result of a serious breakdown in discipline and reluctance of qualified employees to accept supervisory responsibility.

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With respect to applicants, this section has most serious implications. All departments and agencies would be subject to harassment by any applicant who is not hired for the position he feels qualified to fill. For example, subversives acting on their own or on instruction from foreign agents could file suits for the sole purpose of harassment based on allegations of improper questioning during recruitment interviews.

Section 5. Establishes an independent Board on Employees' Rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act short of recourse of the judicial system. It creates the same potential for harassment as section 4. If the charged employee loses his case before the Board, he can still take it to the courts.

Section 6. Permits the CIA and the NSA to request employees or applicants to take a polygraph test or psychological testing designed to elicit information concerning his personal relationship to any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement if the Directors, or their designees, make a personal finding with regard to each individual case that the test or information is required to protect the national security. In view of previous comments in connection with subsection 1(e) (psychological testing) and with subsection 1(f) (polygraph) this section implies that these screening aids will be used as an exception rather than the necessary procedure in every case.

Section 7. Requires an employee of CIA or NSA to give his employing agency 120 days to prevent threatened violation of the act, or redress an actual violation of the act, before proceeding before either the United States district court or the Board on Employees' Rights. This requirement for notice does not apply to CIA or NSA applicants who, along with all other Executive Branch employees and applicants, have a right to bring an action before the Board or the district court and disregard existing administrative remedies or grievance procedures.

The section reaffirms the existing statutory authority of the Director of Central Intelligence and the Director of the National Security Agency to terminate the employment of any employee. However, the potential for statutory conflict still exists should the Director terminate an employee for cause under existing statutory authority and a district court order reinstatement on a finding of a violation of the act.

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Section 8. Recognizes the statutory authority of the Director of Central Intelligence and the Director of the National Security Agency to protect or withhold certain information from unauthorized disclosure. However, information which the Director determines must be protected and not disclosed may actually provide the only basis for refuting unfounded allegations. Since the sanctions embodied in the bill run against the alleged offending employee not the Director making the determination, the net effect of withholding information to protect vital national interests is to make the charged employee bear the consequences, which can include loss of pay and even termination of employment. On the other hand, disclosure of such information with its consequential damage to the national intelligence effort is even less acceptable.

Section. 9. Grants the FBI a complete exemption from the act.

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MAJOR DEVELOPMENTS -- S. 782

90th Congress

Senate Committee: The predecessor bill, S.1035, was reported out of Senate Judiciary Committee on 21 August 1967 (S. Rpt. 534) with full exemption from the bill for the FBI and for the CIA and NSA a partial exemption from the prohibition relating to polygraph or psychological tests and financial statements upon a personal finding by the Director concerned that such information is required to protect national security.

Senate Floor: S. 1035 passed the Senate on 13 September 1967 with amendments which (1) deleted the complete exemption for the FBI and placed it in a similar category with CIA and NSA, and (2) authorized a designee of the Director involved to make the national security finding needed to invoke the partial exemption.

House Committee: S.1035 was referred to the Manpower and Civil Service Subcommittee of the House Post Office and Civil Service Committee, chaired by Representative David N. Henderson. The Director of Central Intelligence testified in executive session on S.1035 and H. R. 17760, a substitute bill introduced by Chairman Henderson. The Director of Central Intelligence recommended a complete exemption from the bill for the CIA and other departments and agencies of the

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intelligence community, the same position set out in the letter to the Director of the Bureau of the Budget from the Director of Central Intelligence dated 12 October 1967. No further action was taken on either bill during the 90th Congress.

91st Congress

Senate Committee: The Director of Central Intelligence testified in executive session before the Constitutional Rights Subcommittee (chaired by Senator Ervin) of the Senate Judiciary Committee on S. 782 which was identical to S. 1035 as amended, and passed by the Senate during the 90th Congress, with specific exemptions from the provisions relating to polygraph, psychological testing and financial disclosures for CIA, NSA and the FBI. The Director of Central Intelligence restated the position that had been taken in connection with S. 1035: the need for a complete exemption. Senator Ervin opposed a complete exemption and eventually informally proposed several modifications on which he informally requested comments. These modifications were revised in keeping with some, but not all, comments made and were included as amendments in the bill as reported out on 15 May 1970 (S. Rpt. 873).

Senate Floor: S. 782 as amended was passed by the Senate on 19 May 1970, without discussion.

House Committee: S. 782 was referred to the House Post Office and Civil Service Committee on 20 May 1970 and Chairman Henderson of the Manpower and Civil Service Subcommittee requested the Agency's views.

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U.S. House of Representatives

SUBCOMMITTEE ON MANPOWER AND CIVIL SERVICE

OF THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Washington, D.C. 20515

May 22, 1970

Mr. Richard Helms
Director, Central Intelligence
Agency
Washington, D.C. 20505

Dear Mr. Helms:

Senate bill S. 782, a bill to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy, passed the Senate on May 19, 1970, and has been referred to the House Committee on Post Office and Civil Service, Subcommittee on Manpower and Civil Service.

The Subcommittee would appreciate receiving your views on this particular legislation.

With best wishes, I am

Sincerely yours,


David N. Henderson
Chairman